

Chapter 29.03. Supplementary and Qualifying Regulations.

29.03.010. Effect of Chapter.

The regulations hereinafter set forth in this Chapter qualify or supplement, as the case may be, the zone regulations appearing elsewhere in this Ordinance.

29.03.020. Substandard Lots at Time of Ordinance Passage.

Any lot legally held in separate ownership at the time of passage of this Ordinance, which lot is below the requirements for lot area or lot width for the District in which it is located may be used for a single-family dwelling if such lot is located in a district which permits single-family dwellings. The width of each of the side yards for such a dwelling may be reduced to a width which is not less than the same percentage of the lot width as the required side yard would be of the required lot width, provided that in no case shall the smaller of the two yards be less than five (5) feet or the total width of the two yards be less than thirteen (13) feet.

29.03.030. Lot Standards.

Except for planned unit developments and cluster subdivisions, and as otherwise provided in this Ordinance, every lot, existing or intended to be created, shall have such area, width and depth as is required by this Ordinance for the district in which such lot is located and shall have frontage upon a dedicated or publicly-approved street or upon a private street or right-of-way approved by the planning commission, before a building permit may be issued.

29.03.040. Every Dwelling to Be on a Lot - Exception.

Every dwelling structure shall be located and maintained on a separate lot having no less than the minimum area, width, depth and frontage required by this Ordinance for the district in which the dwelling structure is located, except that group dwellings, cluster dwellings, condominiums, and other multi-structure dwelling complexes under single ownership and management, which are permitted by this Ordinance and have approval from the planning commission, may occupy one lot for each such multi-structure complex.

29.03.050. Yard Space for One Building Only.

No required yard or other open space around an existing building or which is hereafter provided around any building for the purpose of complying with the provisions of this Ordinance shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected or established.

29.03.060. Sale or Lease of Required Space.

No space needed to meet the width, yard, area, coverage, parking or other requirements of this Ordinance for lot or building may be sold or leased away from such lot or building.

29.03.070. Sale of Lots Below Minimum Space Requirements.

No parcel of land which has less than the minimum width and area requirements for the district in which it is located may be cut off from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

29.03.080 Yards to be Unobstructed - Exceptions.

A. Every part of a required yard shall be open to the sky, unobstructed except for accessory buildings in a rear yard, the ordinary projections of skylights, sills, belt courses, cornices, chimneys, flues, and other ornamental features which project into a yard not more than two and one-half (2 ½) feet, and open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers projecting into a yard not more than five (5) feet, *and uncovered porches or stairs which are not more than 30" above the adjoining grade and that do not extend from the structure more than five (5) feet into the required yard.*¹

B. Raised patios, either open or roofed in a required rear yard under the following conditions: The patio may extend not more than eight feet into the required rear yard; the patio shall be attached to the rear of the dwellings; the patio shall not exceed 50% of the rear width of the dwelling to which it is attached; the

¹ Ordinance No. 03-44, dated 10/30/03.

patio shall be a ground floor patio only; the sides of the patio shall remain unenclosed except for lattice work and required handrails and guardrails.

C. Buildings totally or partially within utility easements. Accessory buildings and structures may be permitted within rear and/or side yard utility easement only under the following conditions:

1. If utilities are or may be constructed underground, buildings and structures may be built provided:

a. The building shall have an area less than 200 square feet and with any concrete slab/monolithic footing or other support extending not more than 12 inches below grade. The owner shall agree to remove the building or structure at his/her expense if future utility placement, replacement, or maintenance requires such action and with the City or franchised utility bearing no liability for any cost incurred.

b. The building will have an area greater than 200 square feet with any concrete slab/monolithic footing or other support extending not more than 12 inches below grade. The site plan for the proposed building has been reviewed by each utility and found to be acceptable, evidenced by a signature of an authorized utility representative on an encroachment permit. The owner shall agree to make utility accommodation, up to and including removal of the building or structure if necessary, at his/her own expense, if future utility placement, replacement or maintenance require such action and with the City or franchised utility bearing no liability for any cost incurred.

2. If the utilities are or may be constructed aboveground, buildings and structure may be built provided at least:

a. fifteen feet clearance is maintained between any part of the building structure and utility lines; and

b. five feet clearance is maintained between building structure and any utility pole.

The owner shall agree to make utility accommodation, up to and including removal of the building or structure if necessary, at his/her own expense, if future utility placement, replacement or maintenance require such action and with the City or franchised utility bearing no liability for any cost incurred.

29.03.090. Additional Height Allowed.

Public and quasi-public utility buildings, when authorized in a district, may be erected to a height greater than the district height limit by conditional use permit.

29.03.100. Exceptions to Height Limitations.

Penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, flagpoles, chimneys, smokestacks, water tanks, wireless or television masts, theater lofts, silos, or similar structures may be erected above the height limits herein prescribed, but no space above the height limit shall be allowed for purposes of providing additional floor space.

29.03.110. Minimum Height of Main Buildings.

No dwelling shall be erected to a height less than one (1) story above grade.

29.03.120. Maximum Height of Accessory Buildings.

No building which is accessory to a one-family, two-family, three-family or four-family dwelling shall be erected to a height greater than one (1) story or twenty (20) feet.

29.03.130. Regulations Governing Fences and Walls.

A. Fences and walls in Residential Districts may be erected or allowed as limited or exempted herein, and provided that any fence or wall over three (3) feet in height shall require a fence permit and if over six (6) feet in height, be designed to withstand anticipated wind loads, as defined within the current adopted Uniform Building Code.

B. Limitations are as follows:

1. No private fence or wall shall be erected, allowed or maintained on public property without City approval. Such approval may be granted by the Zoning Administrator under the following circumstances:

a. The applicant is the owner of the adjacent property for which the fence or wall approval is sought;

b. The public property involved is a City street;

c. When no sidewalk is present, the fence or wall will be placed in such a manner that it will be located no closer than one foot to future sidewalk location;

d. When sidewalk is present, the fence or wall may be placed to within one foot of the location of the sidewalk;

e. The portion of the public right-of-way between the fence or wall and the curb when curb is present, or between the fence or wall and the travel way when no curb is present, shall be maintained by the adjacent property owner;

f. All other provisions of the City Code apply;

g. The owner will sign a document prepared by the City Attorney agreeing to hold the City harmless from liability arising as a result of the placement of the fence or wall on public property.²

2. On Interior lots:

a. In side and rear yards, and that portion of the front yard between the front plane of the house and the required front yard setback, fences and walls shall be allowed to a maximum height of eight (8) feet.

b. In the required front yard setback, fences and walls shall be allowed to a maximum height of four (4) feet. A property owner may erect a six (6) foot fence in the required front yard setback along a common property line that is the back yard of an adjacent property, provided all other provisions of this ordinance are met.³

C. On Corner lots:

1. In side and rear yards, and that portion of the front yard between the front plane of the house and the required front yard setback, fences and walls shall be allowed to a maximum height of eight (8) feet except that in street-facing side and rear yards which back onto front yards of adjoining lots, fences and walls shall be limited to a maximum height of six (6) feet.

2. In the required front yard setback, fences and walls shall be allowed to a maximum height of four (4) feet. A property owner may erect a six (6) foot fence in the required front yard setback along a common property line that is the back yard of an adjacent property, provided all other provisions of this ordinance are met.⁴

D. The height limitations for fences and walls are further limited as follows:

1. In any district requiring a front yard, no obstruction to view above three (3) feet and below seven (7) feet in height shall be permitted on any corner lot within a triangular area formed by:

a. the existing or future back-of-curb lines extended and a line connecting them at points fifty (50) feet from the intersection of such lines or;

b. the property lines and a line connecting them at points thirty (30) feet from the intersection of such lines; whichever is the least restrictive, except for a reasonable number of posts, telephone or power poles, pruned trees and pedestal type identification signs. Within this clear view triangular area, a chain link fence of more than three (3) feet in height shall be considered sight obscuring or view abstracting.

2. No view-obstructing or sight-obscuring fence exceeding three (3) feet in height above the level of the sidewalk or driveway elevation at property line shall be located or erected in the triangular area bounded by lines drawn from a point on the centerline of a driveway on the same or adjacent property or alley, set back fifteen (15) feet from the property line to points on the centerline of the street abutting the property, eighty (80) feet either side of the driveway or alley centerline.

3. The owner of any fence or wall shall have the duty and be required to properly maintain the same by painting, treating, trimming, repairing, or removal.

4. Where a fence or wall is erected on or within five feet of a property line, upon a retaining wall, or where for other reasons there is a difference in the elevation of the surface of the land on either side of a fence, height of the fence shall be measured from a point halfway between the top of the retaining wall and the land on the lower side or from the average elevation of the surface of the land on either side and within ten (10) feet of the fence, but nothing herein contained shall be construed to restrict the fence or wall to less than four (4) feet in height measured from the surface of the land on the side having the highest elevation.

5. The Board of Adjustment may grant special exceptions to the height limits contained in this section for fences or walls surrounding tennis courts, swimming pools, schools, or other special type facilities, where it is shown that the normal use or level of protection requires a greater height for safety or other reasons, provided, however, that the rights of adjoining property owners are equally considered.

² Ordinance No. 01-40, dated 11/15/01.

³ Ordinance No. 01-32, dated 8/16/01.

⁴ Ordinance No. 01-32, dated 8/16/01.

29.03.140. Water and Sewage Requirements.

In all cases where a proposed building or proposed use will involve the use of sewerage facilities, and a connection to a public sewer system as defined by the Utah State Division of Environmental Health is not available, and in all cases where a connection to a public water system approved by the Utah State Division of Environmental Health is not available, the sewage disposal and the domestic water supply shall comply with the requirements of such Division and of the local board of health, and the application for a building permit shall be accompanied by a certificate of approval from said Board or Division.

29.03.150. Drinking Water Source Protection Requirements.

Any and all uses of property must comply with the requirements of the "Drinking Water Source Protection Ordinance" as contained in Chapter 28.02 of the Brigham City Code.⁵

29.03.160. Curbs, Gutters and Sidewalks.

The installation of curbs, gutters and sidewalks of a type approved by the Governing Body ~~may shall~~ be required on any existing or proposed street adjoining a lot on which a ~~building~~ *new primary structure* is to be constructed (*except accessory buildings*) ~~or remodeled~~, or on which a new use is to be established. Such curbs, gutters, and sidewalks ~~may shall~~ be required as a condition of building or use permit approval.⁶

29.03.170. Effect of Official Map.

Wherever a front yard is required for a lot facing on a street for which an official map has been recorded, the depth of such front yard shall be measured from the mapped street line provided by the official map.

29.03.180. Lots and Dwellings on Private Streets - Special Provisions.

Lots with frontage on private streets only shall be allowed by conditional use permit or planned unit development procedure only, and subject to all applicable requirements of this Ordinance and the Subdivision Ordinance.

29.03.190. Family Swimming Pools.

A. Definition. A family swimming pool is defined as any structure or container holding water to a depth of eighteen (18") or greater and having either a diameter or diagonal measurement of ten (10) feet or greater.

B. A family swimming pool shall be permitted in the side and rear yard of a dwelling as an accessory use provided the following requirements are met:

1. The location of such family swimming pool or accessory machinery shall not be less than 10' from any interior property line. On corner lots, the distance from said pool to the property line facing on a street shall not be less than the required side yard for any accessory building in that zone.

2. An outside family swimming pool shall be completely enclosed by a substantial barrier of not less than 6' in height, and any lights used to illuminate said pool or its accessories shall be so arranged as to reflect the light away from adjoining premises. A "substantial barrier" shall mean any barrier that would not allow passage by any person, except by means of a lockable gate.

29.03.200. Bed and Breakfast Special Conditions.

The following regulations and site standards govern the approval and operation of bed and breakfast facilities within residential and commercial zoning districts. Bed and breakfast facilities may be allowed by conditional use permit where the applicant can show evidence of compliance with outlined standards and procedures and where there is a clearly minimal impact on adjacent residential properties and neighborhoods.

A. Requirements for approval. A conditional use permit may be granted by the Planning Commission for a bed and breakfast facility provided that the requirements of this Section are met in addition to the requirements of Chapter 29.06 Conditional Uses.

The granting of a conditional use permit for a bed and breakfast facility shall not exempt the application from meeting other applicable ordinances, covenants, codes, or laws recognized by Brigham City.

⁵ Ordinance No. 97-02, 1/9/97

⁶ Ordinance No. 03-14, 4/3/03

The following pre-conditions and documentation are required:

1. Along with a conditional use application, a letter of application sworn before a notary public shall be provided by the owner(s) stating that such owners or a live-in residential manager, pursuant to part 2(a) below, will occupy the said facility, except for bonafide temporary absences. Said letter shall be recorded in the office of the Box Elder County Recorder, with a certified copy to accompany the building permit application.

2. The effective period of the conditional use permit for bed and breakfast facilities shall be two years from December 31 of the calendar year of the original permit. At the end of every two years thereafter, renewal of the conditional use permit shall be automatically granted upon receipt of the Planning and Zoning Department of certification by the property owner that the property remains the principal residence of the owner or live-in residential manager, pursuant to part 2(a) below, and that all other conditions required at the time of approval remain unchanged.

Notification shall be sent to the owner for response. Failure to obtain such certification may be the basis for revocation of the conditional use permit. The Planning Commission, at its discretion, may require a new application and a demonstration of compliance with all conditions necessary for a conditional use permit.

3. Building plans or a floor plan (1/4 inch to the foot) showing the bed and breakfast facility shall be provided.

4. Plans for proposed signs, showing proposed size, location, materials and appearance of the proposed sign or signs.⁷

B. Development Standards and Requirements for Bed and Breakfast Facilities.

1. In R-1-20, R-1-12, R-1-10, and R-1-8 zoning districts, the bed and breakfast facility shall be occupied by the owner(s) of the property, except for bonafide temporary absences. In all other zoning districts where bed and breakfast facilities are allowed, a live-in residential manager may be permitted at the discretion of the Planning Commission as a condition of approval. In such cases, the bed and breakfast facility shall be occupied by the residential manager except for bonafide temporary absences. A change in ownership will necessitate the request of a new conditional use permit.

2. Bed and breakfast facilities in R-1-20, R-1-12, R-1-10, and R-1-8 shall be limited to a maximum of four (4) guest sleeping rooms per dwelling. The maximum number of guest sleeping rooms in bed and breakfast facilities located in other zoning districts shall be determined by the Planning Commission on an individual basis through the conditional use process.

3. In R-1-20, R-1-12, R-1-10, and R-1-8 zoning districts, only one bed and breakfast facility shall be allowed per block, unless the Planning Commission determines that extraordinary circumstances warrant a greater number.

4. The bed and breakfast facility shall be located on a parcel of sufficient size to accommodate the structure or structures, the number of people using the facility, parking areas, open space areas, etc.

5. The bed and breakfast facility shall be designed, or existing structure modified, so that to the degree reasonably feasible the appearance of the structure remains as a residential dwelling. Unique architecture is encouraged, where possible, in keeping with the local area.

6. In addition to the standards contained in this Section, buildings or sites listed or eligible for listing on the National Register of Historic Places shall be subject to the standards in Chapter 29.24 Heritage Site Overlay.

7. Signage for a bed and breakfast facility shall comply with the sign standards for the district in which the bed and breakfast facility is located. The Planning Commission may also dictate materials and appearance of the sign in order to protect the residential nature of the neighborhood in which the bed and breakfast is located.⁸

8. The development parcel for the bed and breakfast shall include appropriate setbacks, buffering, and landscaping to mitigate impacts on adjoining residential properties.

9. Two parking spaces shall be provided for the host family. At least one off-street parking space shall be provided for each guest room in addition to needed parking for owners/employees of the facility. All required parking shall be subject to front yard setback standards for the district in which the bed and breakfast facility is located.

⁷ Ordinance No. 01-41, dated 11/15/01

⁸ Ordinance No. 01-41, dated 11/15/01

10. The design and size of the bed and breakfast facility shall conform to all applicable Fire, Building and Health Codes. The facility shall be licensed in conformance with all City ordinances.⁹

29.03.210 Day Care Center (Nonresidential) Special Conditions.

A day care center shall meet the following conditions:

A. An adequate drop-off area with needed temporary parking shall be provided so that queuing of vehicles does not occur within the public right-of-way.

B. Parking areas required under chapter 29.05 of this Ordinance shall be in the rear or side yard only if the center is in a residential zone. If a portion of the required side yard is used for parking or access, an equal amount of open space shall be provided elsewhere on the property. Not more than one-half (½) of the required side yard may be used for parking or access to parking.

C. All parking in a residential district shall be screened from abutting properties by a solid fence or other screening materials as approved by the Planning Commission.

D. Any exterior lighting provided by the day care center shall be screened so that the light source is not visible off site in a residential district.

E. Any outdoor play area shall:

1. Provide 40 square feet of area per child.

2. Be fenced with either chain link or other material approved by the Planning Commission. The height of the fence will be determined by the Planning Commission during design review, taking into consideration surrounding safety factors and state standards. In no case shall the fence be less than four feet high.¹⁰

3. Provide shaded areas per State standards.

4. Provide drinking fountains per State standards.

5. Be used from 8:00 a.m. to 8:00 p.m.

F. Service vehicles and deliveries shall only be allowed from 8:00 a.m. to 8:00 p.m. in residential districts.

29.03.220. Uses Not Listed.

Within any zoning district, the Zoning Administrator shall have the authority to identify and categorize unlisted uses within the listed permitted or conditional uses, based on a finding of substantial similarity of character, origin, and impact, etc., to a listed use, and when so categorized such use shall thereafter be recognized and treated the same as a listed use.¹¹

29.03.230 Public Utility Installations Exempt from Certain Zoning Requirements.

The Planning Commission may exempt public utilities from lot area, width, and frontage regulations contained within the zoning district regulations of this title upon a finding that such exemption:

1. Will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity, and

2. That the proposed use will comply with all other regulations and conditions specified in this Title for such use, and

3. Such exemption will not substantially adversely affect the general plan or intent of the zoning district in which the use is proposed, and

4. In the particular case for which the exemption is requested, adherence to lot area, width, and frontage regulations is unnecessary in order to carry out the intent of the general plan.¹²

⁹ Ordinance No. 00-11, dated 4/16/00

¹⁰ Ordinance No. 98-12, dated 3/19/98

¹¹ Ordinance No. 01-11, dated 2/15/01

¹² Ordinance No. 02-24A, dated 5/31/01